

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU**

**MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929**

**Crl.MC.No. 2941 of 2003()**  
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**CC.1230/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT,  
IRINJALAKUDA .**  
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**PETITIONER: ACCUSED 2-4:**  
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- 1. O.V. SUBHASH, S/O. O.V.K.NAIR,  
AGED 33, THUNDIYIL HOUSE,  
P.O. PERINGADI, KANNUR DISTRICT,  
PIN - 673 312.**
- 2. P.C. MRUDUL, AGED 34 YEARS,  
PALIKKANDY KUNHIKANNAN HOUSE,  
P.O. PERINGADI, KANNUR DISTRICT,  
PIN - 673 312.**
- 3. UDAYAN, TECHNICAL, SKYWAY ELECTRICALS,  
DOOR NO.406/2, THRISANGAMAM BUILDINGS,  
NEAR T.C. CHURCH, MAIN ROAD, MAHE.**

**BY ADV. SRI.K.S.MADHUSOODANAN  
SRI.C.P.PEETHAMBARAN**

**RESPONDENTS:**  
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- 1. SIB INSPECTOR OF POLICE,  
IRINJALAKUDA TO BE REPRESENTED BY  
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM.**
- 2. THOMAS ABRAHAM, S/O. P.A. ABRAHAM  
VADAKKEVILA HOUSE, MANATTUKUNNU,  
KATTETTUMKARA P.O., THRISSUR.**

**BY ADV. SMT.S.K.DEVI  
SRI.SANTHOSH P.ABRAHAM  
BY PUBLIC PROSECUTOR SRI. C.K.SURESH**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD  
ON 09 / 07 / 2007 , ALONG WITH CRMC NO. 5332 OF 2003  
THE COURT ON 09/07/2007 PASSED THE FOLLOWING:**

**CRL.MC. NO.2941/2003**

**ORDER ON CRL.MP. NO.3571/2003 IN CRMC. NO.2941/2003**

**DISMISSED**

**09.07.2007**

**SD/- K.R.UDAYABHANU, JUDGE**

**/TRUE COPY/**

**P.S. TO JUDGE**

**tss**

**K.R.UDAYABHANU, J.**

**Crl.M.C.NOS.2941 & 5332 OF 2003**

**ORDER**

Dated, 9<sup>th</sup> July, 2007.

The petitioners in Crl.M.C. 2941/03 are the accused Nos.2,3 and 4 in C.C. No.1230/2002 in the court of JFCM, Irinjalakuda and A1 in the above C.C. is the petitioner in Crl.M.C.5332/03. The petitioners/accused seek to quash the above criminal proceedings in exercise of the power under section 482 Cr.P.C. The major crux in the contention of the petitioners is that Annexure-I private complaint filed by the de facto complainant is totally at variance with the final report filed in the matter. According to the de facto complainant, the accused had promised to install Cable TV equipments at a named house at Palarivattom and had promised that Cable TV programmes can be transmitted to 100 houses around there and that the de facto complainant had made payments to the tune of Rs.2.5 lakhs at various

instalments and that after installation, on account of complaints from the Cable T.V. subscribers as to poor reception of the programmes, the entire net work was dismantled and taken to Mahe on the promise that the same shall be installed at Mahe and the de facto complainant can operate the Cable T.V net work at Mahe. But when the de facto complaint made enquiries about the accused at Mahe, it was found that the equipments have been sold out and the de facto complainant has been cheated with respect to the above amount of Rs.2.5 lakhs paid by him. The above complaint was forwarded to police under section 156(3) Cr.P.C and after investigation, in the final report filed, charges leveled against A1 to A4 (in the original complaint they were 5 accused) are that as a result of the criminal conspiracy on the part of A1 to A4 as against the terms of the agreement dated 15-12-93 that the Cable TV equipments shall be installed

at Palarivattom, the accused defaulted to execute the above promise and cheated the complainant for a sum to the tune of Rs 2.5 lakhs.

2. It is also pointed out that although the agreement is dated 15-12-1993, the private complaint is filed only on 29-8-2002, i.e., after about 9 years. It is also pointed out that in between in the years, in 1996 the complainant had instituted civil suit vide O.S.55/96 before the sub Court, Ernakulam against A1. Hence, according to the accused/petitioners, the criminal proceedings initiated amounts to abuse of process of court and is liable to be quashed.

3. On a perusal of the documents produced, I find that the case set up in the private complaint filed and the allegations in the final report are clearly different. The fact of the long delay in instituting the proceedings has also taken note of. Moreover, it is after about 6 years of the institution of the civil

proceedings, i.e., against A1 alone, the criminal proceedings are sought to be initiated against the rest of the accused also. I find that the case set up by the petitioners that the proceedings initiated is only to harass the petitioners and amounts to abuse of process of court, is well justified. I find that no purpose will be served by conducting the trial on the basis of the above final report which is totally at variance with the private complaint filed on the basis of which case has been registered. Hence, proceedings pending as C.C.1230/2002 in the court of the JFCM,Irinjalakuda is herewith quashed. The Crl.M.Cs are allowed.

K.R.UDAYABHANU, JUDGE.

Kvm/-

K.R.UDAYABHANU,J

CRL.M.C.NOS.2941 &  
5332/2003

ORDER

9/7/2007.